Supreme Court, U.S.
FILED
OCT 23 1996
OFFICE OF THE CLERK

NO. 96-500

In The

Supreme Court of the United States

October Term, 1996

Robert C. Wilson,
Petitioner,

v

Micheal Began, Ocean Orthopedic,
Respondent(s)

Petition For Writ of Certiorari to the
2nd Appellate District Division 6
State of California

SUPPLEMENT BRIEF

Robert C. Wilson
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Petitioner in Propria Persona

TABLE OF CONTENTS

BRIEF INTRODUCTION.....S1

NATURE OF THE CASE..... S1

OVERVIEW OF CALIFORNIA SUMMARY JUDGMENT.... S3

HOW CALIFORNIA'S COURTS DENIED DUE PROCESS.. S4

I. THE TRIAL COURT DENIED MEANINGFUL HEARING. S4

II. THE APPELLATE COURT IGNORED THE OVERWHELMING EVIDENCE OF FRAUD.....S5

III. THE APPELLATE COURT OVERLOOKED EVIDENCE LEADING TO REVERSAL.....S6

IV. THE CALIFORNIA SUPREME COURT DENIED REVIEW AS A MATTER OF LAW S7

SUMMARY.....S8

CONCLUSION.....S8

SUPPLEMENT APPENDIX (SA)..... SA1,SA2,SA3

BRIEF INTRODUCTION

When petitioner, Robert Wilson, previously filed an Opening Brief, Wilson raised, but did not discuss 2 issues; the "nature of the case" and whether California's Summary Judgment denied "due process" by being arbitrary and fundamentally unfair. On the day of filing the opening brief, Wilson experienced difficulties with his voice contol computer.

Specifically, while editing, Wilson's computer erased most of the text of Wilson's opening brief. Consequently, Wilson had to "rewrite" most of the text (in approximately 1-1/2 hours), complete with errors, as well as raising (but not discussing) issues. This Supplement provides the needed discussion. Wilson was unable to provide this supplement earlier due to documentation requirements in 2 other cases and the severe limitations of his injuries.

NATURE OF THE CASE

What should the nature of a case be? The nature of a case should be, at least representative of the facts supported by the evidence, because a case without any evidence by nature is worthless.

Petitioner, Robert C. Wilson, filed a worker's compensation claim for Carpal Tunnel Syndrome,a neurological injury. Before his claim was approved, Petitioner went to see Micheal Began, Respondant, for orthopedic evaluation on December 30, 1991.

During his evaluation, Began informed Wilson that he" didn't think Wilson had Carpal Tunnel Syndrome" and suggested Wilson may have gotten the injury from "lifting something very heavy".

Several Weeks after the evaluation, Wilson requested to see his medical file at Respondents' office. Respondents refused his request. In February, Wilson saw Dr. Phelps, hand specialist, for evaluation. In March 1992, Wilson's work comp claim was approved.(App. 55a)

Wilson did not know that the U. S. Dept. of Labor informed his employer that his claim was going to be denied for "psychological" resons until two years after his claim was approved and a year and a half after he obtained his file from the U.S. Dept. of Labor (App.57a,para. 3). Began's report (App.44a,45a) was not in Wilson's file at work or at U. S. Labor. (App. 48a, para. 1 and 2).

While deposing Began, Wilson learned that Began had other patients whose claims were denied (App.37a,4-25). Began denied he or anyone in his office sent his report to the U.S. Dept. of Labor (SA3) Began further asserted that his training in orthopedic surgery allowed him to render an opinion regarding someone's psychological treatment.(SA1). Began denied that he had any knowledge as to whether or not Wilson's claim had been approved or whether Wilson's injury was work related.(App. 37a,38a,18-23) Began also admitted that neither he or any one else in his office ever received any authorization from the U. S. Dept. of Labor.(App. 36a, 3-14)

Amparo Leon, Respondant's office assistant, informed Wilson during her deposition that Began's report on Wilson was withheld because Wilson asked her in February not to bill anyone for the office visit. Amparo also informed Wilson that Respondant's office "didn't do their billing right away" (App. 40a, paragraphs1,2 and 3)

Only a few days before the Summary Judgment hearing on August 12, 1994, Wilson obtained Began's and Leon's deposition papers and a medical billing document that demonstrated that Began knew that Wilson's injury had not been approved as a work related injury because Began annotated on the bill that the injury was not related to work (App. 42a, #10). The medical bill also showed that Respondant's billed the U.S. Dept. of Labor for medical services on January 7, 1992, one day after Mary Wedel, a Navy employee contacted Respondant's office. (App. 43a, #25).

OVERVIEW OF CALIFORNIA SUMMARY JUDGMENT

Prior to demonstrating how California's Courts deny due process through summary judgment, Wilson respectfully provides an overview of how California's Trial Courts conduct and Appellate Courts review Summary Judgments.

At the Trial Court level, Summary Judgments are governed by Code of Civil Procedure (CCP) 437c.
Of interest for this discussion are the following;

1. CCP 437c (b) " the supporting papers shall include a separate statement...the failure to comply...may **in the Courts discretion** constitute a sufficient ground for denial of the motion"
   "Any opposition to the motion shall be served and filed not less than 14 days preceding...**unless the Court for good cause orders** otherwise".
   See *Gilbertson v Osman* supra 185 CA3d at 315 and *Security National Bank v Broadway* supra 4 CA 4th at 97

2. CCP 437c (h) "**If it appears** appears from the affidavits submitted..**facts essential to justify opposition may exist**..but cannot then be presented...**the Court shall deny** the motion.."
See *Nazar v Rodeffer* (1986) 184 CA3d 506.

At the Appellate Court level, Summary Judgments are reviewed by two standards, the "Independant Review" and the "Abuse of Discretion". There is no currently no dictum mandated by California Supreme Court which standard should be used. *Saldana v Globe Weiss* 233 Cal App 3d at 1513 para. 4.
The Independant Review states "Because the granting of a Summary Judgment only involves a question of law" and proceeds to:

1. Identify the issues framed by the pleadings
2. Determine whether the moving party has presented evidence Negating the opposing party's claim or defense
3. Decide if there are any triable issues of fact in the pleadings.

The abuse of discretion standard determines if the Trial Court has abused any of the discretions afforded by law and is accompanied by the statement "where the judgment is at the discretion of the Court", the burden of proving abuse is on the party opposing the motion.

HOW CALIFORNIA'S COURTS DENIED DUE PROCESS

Both the Trial and Appellate Courts required Wilson to pay costs. Costs are considered property *Giaccio v State of Pennsylvania* 382 U. S. 399, *Lowe v Kansas* 163 U.S. 81. Whether they deny a person "due process" is dependant on the facts of the case. See *Giaccio, Lowe* and compare with *Life & Casualty v McCray* 291 U.S. 566 (1934), *Ballard v Hunter* 204 U.S. 241 (1907).
The facts that denied Wilson due process are discussed below.

I. THE TRIAL COURT DENIED MEANINGFUL HEARING

At the Summary Judgment Hearing, the Trial Court determined the pleadings were defective (App.32a, lines2-5) based on the explanation of Respondant's counsel (App.29a, lines 1-8) and the record (App. 26a,Issue 3) **after** adjudicating the issue. Compare with *Hejmedi v Amfac* (1988) 202 CA3d 525. Additionally the Trial Court incorrectly applied the law to the issue at bar. Specifically, the Trial Court determined there was a problem, namely that Began was not the work comp doctor because Wilson was seen upon the referral of his primary care physician. (App. 29a, lines 9-12,14-15)
As Wilson noted in his reply brief, petition for rehearing, and petition for review, as a matter of law, the issue for worker's compensation cases is whether the information was communicated to the patient. See *Britt v Superior Court* (1978) 20 Cal.3d 844, Wilson's declaration (App. 24a,#9), and Began's deposition (App. 36a).
Where there are conflicts, the affidavits of the opposing party must be accepted as true. *Gale v Woods* (1952) 112 Cal App 2d 650.
If the Judge errs in law, should due process mandate reversal?
Finally, the Trial Court, without any basis or justification, accused Wilson of fraud. (App.29a, line28,30a,line 1-2, 31a,15-17).

II THE APPELLATE COURT IGNORED THE OVERWHELMING EVIDENCE OF FRAUD

Long ago, California enacted CCP 909, which allows parties to provide evidence to the Appellate Court when there is "good cause"for the unavailability of the evidence below.
Since the Trial Court denied (App.13a-22a) several of Wilson's pretrial requests, Wilson attempted on two separate occasions to submit evidence to the Appellate Court for review, which was denied (App. 33a,34a). Specifically, the evidence Wilson requested the Appellate Court take was the deposition papers of Began and Amparo Leon, and the medical billing document.(App. 35a-43a).
Additionally, the Appellate Court determined that Began was acting within "scope of services" (App.8a, para. 1). In his petition for rehearing, (App.75a, para. 2) Wilson countered that Began was not acting in scope of services and provides the following as evidence.

The American Medical Association Encyclopedia of Medicine (1989) describes carpal tunnel syndrome as a " **condition that results from pressure on the median nerve** where it passes into the hand via a gap (the "carpal tunnel") under a ligament at the front of the wrist. The median nerve carries sensory messages from the thumb and some fingers and also motor stimuli to the muscles in the hand; damage to the hand causes sensory disturbances, particularly numbness or tingling, and weakness". The scope of services for an orthopedic surgeon (App. 62a,"musculoskeletal system") does not encompass treatment of neurological injuries such as carpal tunnel syndrome. **By definition**, treatment is rendered by a neurologist (App 66a,"nerves-muscles disorders"). Moreover, contrary to Began's assertion and the Appellate Court's determination that Began was qualified to render a "psychological assessment of an injury ", only a psychologist can make such determinations (App 64a,para 2) "psychiatrist is best qualified to distinguish between physical and psychological causes of both mental and physical distress".

III. THE APPELLATE COURT OVERLOOKED EVIDENCE LEADING TO REVERSAL

As noted (App.3a-10a), the Appellate Court adopted the "Independant Review" approach which;

1. Identifies the issues framed by the pleadings.

The Appellate Court identified the following issue(s)

a. The statute of limitations were a bar to the action(s) of negligence or "wrongful act".(App. 7a)

(Note: The Appellate Court never addressed the issue Wilson raised, namely that the pleadings were defective. (App. 32a, 2-5).

2. Determines whether the moving party has presented evidence negating the opposing party's claim or defenses.

The Appellate Court noted certain facts (App. 8a, paragraph 2)
(Note: Wilson requested correction of those facts. (App. 69a).

3. Determines if there are any triable issues of fact underlying thoe pleadings.

The Appellate Court noted (App.8a, para.4,9a,para.1) that "Wilson requested these continuances to further depose the Navy claims administrator concerning, in part, "how she identified herself to defendants". "Wilson failed to note how the deposition of the Navy Administrator would bear on his discovery of the letter".

This is not true. As noted in the Appendix (App.58a,#9),which was provided to the Appellate Court, Wilson noted that, "Amparo Leon Leon informed me during her deposition that Mary Wedel identified herself (to Respondants) as an adjuster with the U.S. Dept. of Labor. In addition, the "letter" is addressed to "Mary Wedel, Adjuster, U.S. Labor (App. 44a), which Wilson requested correction(App.72a,#1) **For this issue,this petition will raise the following question; Can a state court be allowed to negate a plaintiff's appeal simply because the plaintiff did not point out all the specific evidence that would lead to reversal, even though the specific evidence was already in the record? Is this "due process"?** Because of the numerous errors (App67a-76a) committed by the Appellate Court in their opinion, Wilson had to spend a significant amount of time correcting those errors in his petition for rehearing.

As further evidence in support of the reversible evidence (App.58a,#9), Wilson has provided on a copy of letter (See SA2), which was provided by Respondants to Wilson, in lieu of Wilson's request for his medical file. This letter was provided to Appellate Court as part of record, but inadvertantly omitted in Wilson's initial U.S. Supreme Court Appendix

IV. THE CALIFORNIA SUPREME COURT DENIED REVIEW AS A MATTER OF LAW.

According to California Rules of Court (CRC) 29 (a) (1) Review by the (California) Supreme Court will be ordered "where it appears necessary to secure uniformity of decision or the settlement of important questions of law" As noted in *Saldana v Globe-Weiss*,233 Cal App 3d at 1511, Justice Buckley concluded "we are not alone among the districts in the contradictory application of the standard of review". See also *Saldana* at 1513, paragraph 2, last sentence.

As noted in Wilson's petition for review (App78a,#1) Wilson raised the issue that California's standards of review for Summary Judgments was not uniform. Furthermore, Justice Buckley found that California had no dictum stating which standard is the appropriate one to use for review of a summary judgment. See *Saldana*, page 1513, para 4. Wilson proposed a dictum, patterned after Saldana @ 1512 footnote last paragraph, that was consistent with published cases, and would **not** require substantial reorientation of process, such as occured in *Boddie* 401U.S. 371,*Santosky* 455 U.S.745, and *Lindsey* 405 U.S. 56.

SUMMARY

In summary, the reason why California's Summary Judgment Procedure violates due process is because laws are enacted governing the process at the Trial Court level and then randomly ignored at the Appellate Court level. It is fundamentally unfair for a state to enact laws, publish cases supporting the enacted law, only to have the Appellate Court ignore the law that the party justifiably relies on. The specific law and case Wilson relied on were CCP 437c(h) and *Nazar v Rodeffer*.(1986) 184 CA3d 506. Wilson, as in *Nazar*, discovered Fraud even though he initially asserted negligence. More to the point is that the Appellate Court was allowed to, under the Independant Review approach, ignore the Fraud nature of Wilson's case that Wilson learned during discovery because defendant's pleadings address only negligence. Although not applicable to Wilson's case, but noteworthy for this discussion, is that in *Gilbertson* and *Broadway*, both of which were reviewed under the abuse of discretion standard, there was no mention if the Appellate Court found any "triable issues of fact underlying the pleadings", prior to review under the abuse of discretion standard.

CONCLUSION

This petition should be granted and the judgment reversed because it would be a statement by the U.S. Supreme Court that in spite of a states arbitrary actions or legislation, ultimately the United States Supreme Court insures that each of its citizens are accorded justice. Wilson respectfully requests the U.S. Supreme Court grant this petition for writ of certiorari. The U. S. Supreme Court is the last Court that Wilson can request review. The issues raised in this petition could have far reaching effects and if granted, could have an even more demonstrative impact on each citizens view of the U.S. Supreme Court as upholding justice with "due process".

Robert Wilson
Petitioner in Propria Persona

SUPERIOR COURT OF THE

STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

ROBERT WILSON, JR.	) No. CIV 136084
Plaintiff,	)
vs.	)
	)
MICHAEL D.BEGAN, M.D.,	)
OCEAN ORTHOPEDIC	)
SURGERY AND SPORTS	)
MEDICAL GROUP	)
Defendants,	)

Deposition of MICHAEL D. BEGAN, M.D., taken on behalf of the Plaintiff, at 260 Maple Court, Suite 231, Ventura, California, commencing at 11:50 a.m., Thursday, July 7, 1994, before Kathleen L. Tillquist, Certified Shorthand Reporter.

From Pages 12, 13 of deposition, lines 7 thru 12

Q Does your board certification as an orthopedic surgeon--does your board certification as an orthopedic surgeon qualify you to make psychological assessments?

A My training as a physician and surgeon does, yes.

I, MICHEAL D. BEGAN, M.D., declare under the penalty of perjury that I have read and reviewed the transcript of my testimony taken by deposition on July 7, 1994, in the city of Ventura, California, and the attached transcript is a true and accurate transcript to the best of my knowledge and belief.

Executed on this 3rd day of August, 1994

S/Micheal D. Began, M.D.

Dean
ORTHOPEDIC SURGERY
AND SPORTS MEDICAL GROUP

Thomas F. Golden, M.D.
Michael D. Began, M.D.
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Community Medical Plaza
168 N. Brent, Suite #505
Ventura, CA 93003
(805) 648-3902
FAX (805) 648-4014

February 26, 1992

TO WHOM IT MAY CONCERN:

Re: Robert Wilson SS#285-64-8800

In January 1992, the office of Dr. Began received a call from Mary Wedel, (local adjustor from the Department of Labor office) stating that Mr. Robert Wilson had had a work related injury.

At that time she provided us with a workers' comp address, name of employment, date of injury and a claim number.

If you have any questions regarding this short note, do not hesitate to direct them to Ms. Mary Wedel at (805) 989-3304.

Thank You,

Dr. Began's office.

C
EXHIBIT
Amparo Leon 6-29-94
Joe Rivas 7034

115 Dean Drive, Suite B • Santa Paula, CA 93060 • (805) 525-0031 • FAX (805) 525-2119

A To your industrial insurance carrier.

Q Which is?

A I had no idea.

Q To my industrial insurance carrier?

A Yes.

Q You intended to send that to -- looking at my patient information sheet, who was my industrial insurance carrier?

A It says U.S. Department of Labor.

Q Did you follow -- your office follow through with its intention?

A No report was --

MR. HUESTIS: Objection.

Excuse me, Doctor.

The question is, did the office follow through with its intentions. The previous question was his intention. I want to make sure we know who we are talking about.

MR. WILSON: Okay.

Q Did your office -- did you or anyone on your office staff follow through with your intention to send the December 30th, 1991, report to the U.S. Department of Labor?

A No.

Q Why not?